

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:09-CR-58-FL
NO. 5:12-CV-344-FL

This matter comes before the court on petitioner's motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct sentence. Petitioner argues that the Fourth Circuit's opinion in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc) supports the relief sought. Where the government in several cases before this court recently has withdrawn motions to dismiss § 2255 petitions raising Simmons arguments, see, e.g., United States v. Harper, 5:09-cr-49-FL-1 (DE # 57), signaling reconsideration of procedural challenges previously asserted, the court finds cause to direct action from the government. Accordingly, the government is DIRECTED to file within seven days of the date of this order a notice indicating whether the government intends to withdraw its previous motion to dismiss petitioner's § 2255 petition.

SO ORDERED, this the 24th day of August, 2012.

John W. Eloragan

LOUISE W. FLANAGAN
United States District Judge